

## ***REMARKS***

This is a full and timely response to the final Office Action mailed on January 21, 2004 (Paper No. 21). Claim 83 is directly amended and claims 54, 55, 68-72, 84 are cancelled. Claims 91-107 are newly added. Accordingly, claims 83 and 85-107 are now pending in the present application. Reconsideration and allowance of the application and presently pending claims are respectfully requested in view of the foregoing remarks.

### **A. Response to Claim Rejection Under 35 U.S.C. §102**

Claims 68 and 86 stand rejected under 35 U.S.C. §102(b) as allegedly being anticipated by U.S. Patent No. 5, 771,435, to *Brown*. Applicants respectfully traverse this rejection on the grounds that the reference does not teach or disclose all of the claimed elements.

A proper rejection of a claim under 35 U.S.C. §102 requires that a single prior art reference disclose each element of the claim. *See, e.g., W.L. Gore & Assoc., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303, 313 (Fed. Cir. 1983).

#### **1. Claim 86**

Claim 86 recites:

86. A digital home communication terminal (DHCT) comprising:  
memory configured to store program code; and  
*a processor that is programmed by the program code to provide the user with a first selectable option and a second selectable option responsive to the DHCT receiving a request from a user for implementing a random access function, wherein selecting the first selectable option results in the random access function being implemented after a first time period and selecting the second selectable option results in the random access function being implemented after a second time period that is substantially shorter than the first time period.*

(Emphasis Added)

Applicants respectfully submit that *Brown* fails to disclose or teach providing a user with a first selectable option and a second selectable option where the first and second selectable options result in the random access function. In fact, *Brown* discloses enabling a user to “request a video-on-demand (VOD) version of the interactive application in order to exercise VCR function features (such as fast forward, rewind, pause, etc.). (col. 3, lines 38-41). *Brown* does not provide a first and

second selectable option; instead, *Brown* teaches that “if such a request is made, and if the system’s resources would not be constrained by the transmission of the video-on-demand presentation of the interactive application, and this embodiment transmits the video-on-demand version of the interactive application to the viewing node. On the other hand, if the system’s resources would be constrained by the transmission of the VOD version, one embodiment of the invention’s interaction system again directs the requesting viewer to view a near-video-on-demand version of the particular application.” (col. 3, lines 42-50). In other words, once the viewer or user requests a video presentation with VCR functional features, the system automatically decides whether to transmit the video-on-demand version of the interactive application or direct the requesting viewer to view a near-video-on-demand version of the particular application. It does not allow the user to select a first and second selectable option. In this regard, *Brown* further does not disclose or teach a first selectable option be implemented at a first time period and a second selectable option being implemented after a second period of time that is substantially shorter than the first time. Consequently, a *prima facie* case of anticipation could not be established. For at least this reason, among others, Applicants respectfully request that claim 86 be allowed and the rejection be withdrawn.

## 2. Claim 68

Applicants are not addressing the validity of all assertions made by the Examiner regarding claim 68 because it is cancelled in this response. Therefore, Applicants should be not presumed to agree with any statements made by the Examiner regarding claim 68 unless otherwise specifically indicated by Applicants.

## B. Response to Claim Rejection Under 35 U.S.C. §103

Claims 54, 55, and 83-85 stand rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over *Brown* in view of U.S. Patent No. 6,253,375, to *Gordon, et al.* Claims 69 and 87 stand rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over *Brown*. Claims 70-72, and 88-90 stand rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over U.S. Patent No. 6,543,053, to *Li, et al.* in view of U.S. Patent No. 6,035,281, to *Crosskey, et al.* Applicants respectfully traverse these rejections.

In order for a claim to be properly rejected under 35 U.S.C. §103, the teachings of the prior art reference must suggest all features of the claim invention to one of ordinary skill in the art. *See*,

e.g., *In re Dow Chemical*, 837 F.2d 469, 5 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1988); *In re Keller*, 642 F.2d 413, 208 U.S.P.Q. 871, 881 (C.C.P.A. 1981).

1. Claim 83

Claim 83, as amended, recites:

83. A system comprising:

*a bandwidth allocation manager configured to allocate bandwidth to a plurality of auxiliary digital transmission channels responsive to at least information received from a subscriber, wherein each of the plurality of auxiliary digital transmission channels carries video programs with random access functionalities for the video programs transmitted via a plurality of other digital transmission channels.*

(Emphasis Added)

Applicants respectfully submit that *Brown* in view of *Gordon* fails to disclose, teach, or suggest at least the above-emphasized step/feature;element. In the Office Action on page 6, it was admitted that *Brown* fails to disclose allocating bandwidth to a plurality of auxiliary digital transmission channels respective to at least the information, wherein the plurality of digital transmission channels enable random access functionality for programs transmitted via a plurality of other digital transmission channels. In this regard, the Office Action refers to *Gordon* as teaching an interactive distribution system for transmitting an information channel and a command channel which is used with the information channel. The Office Action alleged that it would be obvious that utilizing two separate channels, one for the video data and one for random access function, would have limited the congestion of transmitting all the data on one channel and would have enabled viewing of the video channel even if the random access channel was non-functioning. Therefore, the Office Action alleged that it would be obvious to one having ordinary skill in the art at the time the invention was made to modify *Brown* to include the claimed allocating bandwidth to a plurality of auxiliary digital transmission channels corresponding to a plurality of VOD channels responsive to receive information to limit congestion and to enable viewing even if the control random access channel was not functioning. (page 6-7 of the Office Action).

Claim 83 has been amended to include “allocate bandwidth to a plurality of auxiliary digital transmission channels responsive to at least information received from a subscriber, wherein each of the plurality of auxiliary digital transmission channels carries video programs with random access functionalities for the video programs transmitted via a plurality of other digital transmission

channels.” In one embodiment of this feature of the claim, “[e]ach movie may be represented by a single ‘normal play’ compressed video stream or, alternatively, by multiple streams representing different playback speeds and directions. For example, a single movie may be stored as three separate video streams, one for normal play, one for fast forward and one for reverse” (page 14 of the instant application, lines 4-11).

*Gordon* does not disclose the feature of “allocate bandwidth to a plurality of auxiliary digital transmission channels responsive to at least information received from a subscriber, wherein each of the plurality of auxiliary digital transmission channels carries video programs with random access functionalities for the video programs transmitted via a plurality of other digital transmission channels”, as recited in claim 83. Instead, *Gordon* discloses a system using “three independent communication[] channels to facilitate distribution and interactive control of the information distribution process. Specifically, an information channel propagates program information and a command channel propagates control information from the service provider[r] to the subscriber equipment, and a back channel propagates command and control information from the subscriber equipment to the service provider. . . . Consequently, the service provider sends through the command and/or information channels selection menus to the subscriber equipment such that a subscriber can select a particular program. The program selection request is propagated through the back channel to the service provider. The service provider then sends the program through the information channel for display on the subscriber equipment. The subscriber can manipulate (e.g., fast forward, pause, rewind, perform context based branching and the like) the presentation via commands sent from the subscriber equipment to the service provider” (col. 2, lines 13-34).

*Gordon* apparently teaches using one communication channel for its command information and does not disclose allocating bandwidth to a plurality of auxiliary digital transmission channels that carry video programs with random access functionalities for the video programs transmitted via a plurality of other digital transmission channels, as recited in claim 83. Accordingly, a *prima facie* case of obviousness cannot be established. Applicants respectfully submit that claim 83 be allowed and the rejection be withdrawn.

## 2. Claim 88

Claim 88 recites:

88. A digital home communication terminal (DHCT) comprising:  
memory configured to store program code; and  
*a processor that is programmed by the program code to communicate to the user an amount of bandwidth that has been consumed as a result of random access functionality that has been provided to the user.*

(Emphasis Added)

Applicants respectfully submit that *Li* in view of *Crosskey* fails to disclose, teach, or suggest each and every step/feature/element of the claims, particularly the above-emphasized step/feature/element. Applicants respectfully submit that “[t]he PTO has the burden under §103 to establish a *prima facie* case of obviousness. It can satisfy this burden only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references.” *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988).

“Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching or suggestion supporting the combination. Under section 103, teachings of references can be combined only if there is some suggestion or incentive to do so.” *ACS Hospital Systems, Inc., v. Montefiore Hospital*, 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984). “There must be some reason, suggestion, or motivation found in the prior art whereby a person of ordinary skill in the field of the invention would make the combination.” *In re Oetiker*, 977 F.2d 1443, 1447, 24 USPQ 2d 1443 (Fed. Cir. 1992).

*Li* apparently discloses a data distribution system and a protocol for interactive information services over a network and in particular for video-on-demand applications. As admitted in the Office Action, *Li* does not disclose being responsive to enabling the plurality of random access functions and communicating to the user an amount of bandwidth that has been consumed of a result of random access functionality that has been provided to the user (Page 8 of the Office Action). In this regard, the Office Action refers to *Crosskey*, which apparently discloses a system and method for billing one or more participating parties for client access to the Internet. Nowhere does *Crosskey* mention a plurality of random access functions nor does it communicate to a user an amount of bandwidth that the user has consumed as a result of random access functionality that has

been provided to the user. Thus, a *prima facie* case of obviousness cannot be established. Accordingly, Applicants respectfully request that claim 88 be allowed and the rejection be withdrawn.

Further, *Li* and *Crosskey*, both individually and in combination, do not provide any suggestion and motivation to combine the two references. *Crosskey* apparently discloses a system and method for billing one or more participating parties for client access to the Internet and *Li* apparently discloses a data distribution system and a protocol for interactive information services over a network and in particular for video-on-demand applications. *Crosskey* fails to disclose, teach, or suggest 1) a plurality of random access functions and 2) communication to a user an amount of bandwidth that the user has consumed as a result of random access functionality that has been provided to the user. In addition, as admitted in the Office Action, *Li* does not disclose being responsive to enabling the plurality of random access functions and communicating to the user an amount of bandwidth that has been consumed of a result of random access functionality that has been provided to the user. Consequently, Applicants respectfully submit that *Li* in view of *Crosskey* does not render claim 88 obvious. Accordingly, for at least this reason, among other, Applicants respectfully request the claim 88 be allowed and the rejection be withdrawn.

### 3. Claims 85, 87, and 89-90

Because independent claims 83, 86, and 88 are allowable over the cited art of record, dependent claims 85, 87, and 89-90 are allowable as a matter of law for at least the reason that dependent claims 85, 87, and 89-90 contain all features and elements of their respective independent base claim. *See, e.g., In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). Accordingly, Applicants respectfully request that the rejection to dependent claims 85, 87, and 89-90 be withdrawn for this reason alone.

### 4. Claims 54, 55, 70-72, and 84

Applicants are not addressing the validity of all assertions made by the Examiner regarding claims 54, 55, 70-72, and 84 because they are cancelled in this response. Therefore, Applicants should be not presumed to agree with any statements made by the Examiner regarding claims 54, 55, 70-72, and 84 unless otherwise specifically indicated by Applicants.

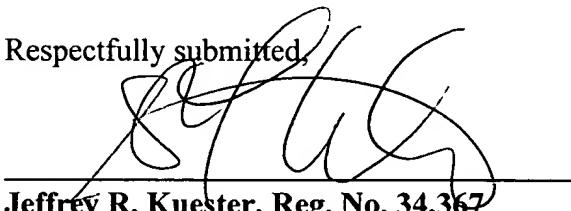
C. Newly Added Claims 91-107

Applicants respectfully submit that cited references fail to disclose, teach, or suggest each and every feature of the newly added claims 91-107. Applicants respectfully request that claims 91-107 be allowed.

***CONCLUSION***

In light of the foregoing amendments and for at least the reasons set forth above, Applicants respectfully submit that all objections and/or rejections have been traversed, rendered moot, and/or accommodated, and that the now pending claims 83 and 85-107 are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned agent at (770) 933-9500.

Respectfully submitted,

  
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